

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of XAVIER SCOTT ROLACK-
JONES, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NISSA ROLACK,

Respondent-Appellant.

UNPUBLISHED

January 6, 2009

No. 287500

St. Clair Circuit Court

Family Division

LC No. 07-000416-NA

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Respondent appeals as of right from the order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that the statutory ground had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent was convicted of bank robbery and sentenced to 5½ to 40 years in prison. The evidence established that respondent arranged for her mother to be the child's guardian. The placement of a child with a relative where the child receives adequate care does not render the child without proper care and custody. *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991). However, the trial court's eventual decision to terminate that guardianship arrangement demonstrated that it was not appropriate. Therefore, the trial court did not clearly err when it found respondent failed in the past to provide proper care or custody for the child.

With regard to respondent's future ability to provide proper care and custody, respondent cooperated with the foster care worker and apparently did everything she could while in prison to comply with the parent/agency agreement (e.g., she completed her GED and was apparently on a waiting list to take a parenting class). However, the fact that respondent was incarcerated was a circumstance that the trial court could properly consider in deciding whether petitioner has met its burden of proof. See, e.g., *In re Huisman*, 230 Mich App 372, 385; 584 NW2d 349 (1998), partially reversed on other grounds, *Trejo, supra* at 353 n 10. There was no guarantee that respondent would be released at her earliest release date, almost two years after the termination

trial, and even if she were released then it would take her time to find a job and work toward reunification. Given this evidence, there was no reasonable expectation that respondent would soon be able to parent the child, who was eight years old at the time of the termination trial.

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5).¹ Respondent clearly loved the minor child, and the child knew respondent. However, they had lived apart for three years. During that time, the child had experienced an unsettled lifestyle while his guardian battled homelessness. It was unfair to ask the child to continue waiting to see if respondent were released from prison at her earliest release date. He deserved permanency and stability in his life before he grew any older.

Affirmed.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood

¹ The statute was amended by 2008 PA 199, effective July 11, 2008, and now requires that a court affirmatively find that termination of parental rights is in the child's best interests.